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Conclusiveness of Judgments - Personal Injury - Discsretion of the Court

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original takers, the lower court possibly read "or" to have been interchangeable with "and". Although courts have done so in the past,[18] they are inclined to do so only when this carries out the intent of the testator.[19] Generally, "and" and "or" are given their common meanings unless this construction obviously is contrary to the intent of the testator.[20] It is not the job of the court to rewrite a will so as to make it most fair to all concerned, but rather to enforce the will of the testator as he instructed.

The appellate court states that this is a case of first impression in Indiana and the question involved could become one of significant economic import. Conflicting court opinions within the same jurisdiction indicate that a state supreme court decision or legislative action would be helpful. Some aid is necessary to clarify who takes under a class gift which provides for an alternative if a contingency is fulfilled as to part of the members. In North Dakota there is neither reported case law precedent nor legislative pronouncement. Therefore, careful legal draftsmanship is necessary to avoid the possible exclusion of persons the testator intends to include in his class gift.

PAULA O. HOSICK

CONCLUSIVENESS OF JUDGMENTS—PERSONAL INJURY—DISCRETION OF THE COURT—Plaintiff brought an action for injuries he sustained in a fall on the defendant's stairway. A Stipulation of dismissal was executed by the attorneys for both parties and the trial court ordered judgment of dismissal with prejudice. Three years later the trial court granted plaintiff an order setting aside and vacating the judgment. At the time of the judgment, the plaintiff had not been aware of an injury to his hip resulting from the fall. Surgery and extensive hospitalization were ncessary for treatment of the hip injury. The Minnesota Supreme Court *held* circumstances justified vacating the judgment. *Simons v. Schiek's, Inc.*, 275 Minn. 132, 145 N.W.2d 548 (1966).

Once a final judgment is obtained against a tortfeasor it is

18. In re Braun's Estate, 256 Ia. 55, 126 N.W.2d 318 (1964); Howard v. Batchelder, *Supra* note 16, at 311; In re Ginsburgh's Estate, 102 N.Y.S.2d 827 (1950); Nat'l State Bank v. Morrison, 7 N.J.Super. 333, 70 A.2d 888 (1949); Smith v. Dellitt, 249 Ill. 113, 94 N.E. 113 (1911).

19. In re Braun's Estate, *Supra* note 18, at 321; Howard v. Batchelder, *Supra* note 16, at 311; Nat'l State Bank v. Morrison, *Supra* note 18, at 893.

20. In re Braun's Estate, *Supra* note 18, at 321; Howard v. Batchelder, *Supra* note 16, at 311; Boys v. Boys, *Supra* note 16, at 219.

res judicata,[1] which is a well-established doctrine calculated to prevent repetitive litigation.[2] The goals of res judicata are reliability and finality of judgments, and the conservation of judicial time and energy.[3] In general, a judgment once solemnly entered should not easily or lightly be opened or vacated except for cogent reasons.[4]

The grounds generally used for vacating a judgment include mistake, surprise, inadvertance, excusable neglect, fraud, and the broad category of "any other reason justifying relief".[5] A limitation of time may be imposed by statute to vacate a judgment on certain grounds without imposing similiar limitations on motions to vacate a judgement on other grounds.[6] A one year statute of limitation is common for all grounds except that reasonable time is usually allowed for the "any other reason" provision.[7] The right to have a judgment vacated is not confined to the unsuccessful litigant.[8]

For purposes of vacating judgments, courts in the past have classified latent injuries as mistakes thus limiting motions to vacate to one year.[9] In order to avoid this one year statute of limitation in the instant case, the Minnesota Supreme Court decided to classify the latent hip injury as "any other reason justifying relief." This solution to provide equity for the plaintiff raises serious questions concerning the conclusiveness of personal injury judgments. The courts are faced with a dilemma in latent injury cases since there are two legitimate interests to protect—the defendant's rightful desire to buy his peace and rely on the judgment, and the plaintiff's rightful expectation that the wrongdoer should pay just compensation for the injuries he has inflicted.[10]

The rule governing relief from judgments is equitable in nature and is to be administered accordingly.[11] A petition to vacate a judgment is addressed to the sound legal discretion of the trial court and its determination will not be disturbed except for abuse of discretion.[12] The principle of res judicata is not to be applied

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1. Pacific Indemnity Group v. Dunton, 243 Cal. App.2d 504, 52 Cal. Rptr. 332 (1966).
2. In re Estate of Radocay, 30 Wis.2d 671, 142 N.W.2d 224 (1966).
3. Application of Hitching, 342 F.2d 80 (1965).
4. Jefferson Standard Life Ins. Co. v. Hydrick, 143 S.C. 127, 141 S.E. 278 (1928).
5. FED. R. CIV. P. 60 (6 grounds); N. D. R. CIV. P. 60 (6 grounds); OHIO REV. CODE § 2325.01(10 grounds).
6. Kingsley v. Steiger, 141 Wis. 447, 123 N.W. 635 (1909).
7. FED. R. CIV. P. 60(b); MINN. R. CIV. P. 60.02; N. D. R. CIV. P. 60(b); N. Y. R. CIV. PRAC. 5015(a); WYO. R. CIV. P. 60(b).
8. Dedrick v. Charrier, 15 N.D. 515, 108 N.W. 38 (1906).
9. O'Meara v. Haiden, 204 Cal. 354 (1928); Harvey v. Georgia, 148 Misc. 633, 266 N.Y.S. 168 (1933); Serr v. Biwabik Concrete Aggregate, 202 Minn. 328, 278 N.W. 355 (1938); Pickering Lumber Co. v. Campbell, 147 Okla. 158, 295 P. 596 (1938).
10. Scheer v. Rockne Motors Corp., 68 F.2d 942 (1934); Collins v. Hughes and Riddle, 134 Neb. 380, 278 N.W. 888 (1938).
11. Di Vito v. Fidelity and Deposit Co. of Md., 361 F.2d 936 (1966).
12. Perrin v. Aluminum Co. of America, 197 F.2d 254 (1952).

so ridgidly as to defeat the ends of justice.[13] Relief from a judgment under the clause of the rule allowing such relief for "any other reason" is appropriate under extraordinary circumstances.[14] Res judicata, as the embodiment of a public policy, must at times be weighed against competing interests and must on occasion yield to other policies.[15]

In England, a special committee was established in 1962 to examine its three year statute of limitations for personal injury judgments. The committee recognized the need to protect defendants from endless litigation, but recommended a more flexible statute of limitations by giving the judges reasonable discretion as to the time allowed to bring a motion to vacate.[16] This recommendation is remarkably similar to the solution reached by the Minnesota Supreme Court in the instant case substituting a reasonable time for the one year statute of limitation.

The vacating of personal injury judgments after the one year statute of limitation, however, are few in number.[17] Relief from a valid judgment is granted only in very limited and unusual circumstances.[18] The reasonable time standard has been applied in exceptional cases such as judgments involving minors.[19] A New York decision has held that judgments are essentially compromises between the parties of the claims then presented and in applying the bar of res judicata the court should look into the record and not be entirely restricted by the judgment itself.[20]

Although most personal injury claims are settled by a release, the consequences of trial and final judgments are nevertheless significant since they are a guide to what might be done in cases of releases. In North Dakota, the Code provides that a general release does not apply to claims not known or suspected by the releasor at the time of settlement.[21] That American courts have been willing to grant equitable relief for latent injuries settled by a release and not so in cases of judgments, indicates the principle of res judicata should be reevaluated. In the instant case the Minnesota court cautiously granted equitable relief at the expense of the doctrine of res judicata. By leaving the issue of time to the discretion of the court, Minnesota has found a flexible solution which will prevent a plaintiff from suffering hardship, and

13. In re Spinoza's Estate, 117 Cal. App. 364, 255 P.2d 843 (1953).
14. DeLong's Inc. v. Stupp Bros. Bridge and Iron Co., 40 F.R.D. 127 (1965).
15. Spilker v. Hankin, 188 F.2d 35(1951).
16. *Report on Limitations of Personal Injury Actions,* 106 SOLICITOR'S JOURNAL 867 (Nov. 2, 1962).
17. Kurtz v. Sunderland Bros. Co., 124 Neb. 776, 148 N.W. 84 (1933).
18. Benjamin v. United States, 348 F.2d 502 (1965).
19. Doud v. Minneapolis St. Ry. Co., 259 Minn. 341, 107 N.W.2d 521 (1961).
20. Holland v. Spears and Co., 193 Misc. 524, 83 N.Y.S.2d 21 (1948).
21. N. D. CENT. CODE § 9-13-02 (1960).

at the same time enable a defendant to properly defend himself against the claim being made.

DAVID AXTMANN

IMPUTED CONTRIBUTORY NEGLIGENCE—MASTER SERVANT RELATION—NOT A BAR TO MASTER'S RECOVERY IN AUTOMOBILE CASES—The plaintiff was riding as a passenger in his own truck which was being driven by his employee. The truck collided with another truck owned by the defendant corporation and operated by its employee. Plaintiff brought suit against the corporation to recover for his own personal injuries and damage to his truck, alleging negligence on the part of the defendant's driver. The defendant denied any negligence and alleged the contributory negligence of the plaintiff's driver which when imputed to the plaintiff would bar recovery. The trial court instructed the jury that, if they found the plaintiff's driver to be contributorily negligent, then as a matter of law the contributory negligence would be imputed to the plaintiff. The jury's verdict was in favor of the defendant and judgment was rendered accordingly. The plaintiff appealed to the Minnesota Supreme Court and argued that the doctrine of imputed contributory negligence was unjust and ought to be abandoned. The Supreme Court *held* that, although the master may have been vicariouslly liable for any injuries suffered by the third party as a result of his servants negligence, the master can not be barred from recovery for his own injuries and damages caused by the negligent third party, even though the servant was contributorily negligent.

In reversing the lower court and granting a new trial, the supreme court expressly limited its abandonment of the doctrine of imputed contributory negligence to automobile negligence cases.[1] *Weber v. Stokely-Van Camp, Inc.*, 274 Minn. 482, 144 N.W.2d 540 (1966).

The doctrine of imputed contributory negligence is the device whereby the plaintiff is denied recovery against the defendant when the negligence of another is "imputed" to the plaintiff because of

1. There was a second issue decided by the Minnesota Supreme Court, that of whether or not the procurring of affidavits from a juror after the trial, relating to the conduct or discussions during deliberations, may be used to impeach a verdict. The trial court's conclusion, based on affidavits and counter-affidavits, that the alleged misconduct was not sufficient to warrant a new trial, was affirmed. This issue will not be discussed within this article.